

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the percentage of lot occupancy requirements (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: February 27, April 24 and May 24, 1991 and June 9, 1993

DECISION DATES: September 4, 1991, June 9, 1993 and February 2, 1994

DISPOSITION:

On September 4, 1991, the Board GRANTED the application with CONDITIONS by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant). On June 9, 1993, the Board GRANTED the application as further amended with CONDITIONS by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting). On February 2, 1994, the Board APPROVED a MODIFICATION OF PLANS by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record). On November 6, 1996, the Board APPROVED a SECOND MODIFICATION OF PLANS by a vote of 3-0 (Angel F. Clarens and Laura M. Richards to approve; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not present, not voting, not having heard the case).

FINAL DATES

OF ORDERS:

August 13, 1993, March 7, 1994 and February 3, 1997

MODIFICATION ORDER

By order dated August 13, 1993, the Board granted the application. By order dated March 7, 1994, the Board approved a modification of plans in the application. By order dated February 3, 1997, the Board approved a further modification of plans in the application. By

letter dated June 17, 1997, Castleton-Projector, L.P. (Castleton), through counsel, requested a further modification of approved plans. Castleton noted that the original applicant was Chatham Lake Associates. However, Castleton purchased the project in 1996. Since that time, it has studied ways to improve the plans, to enhance the marketability of the project.

THE MOTION FOR RECONSIDERATION:

One of the parties to the application, Ms. Barbara Kahlow, submitted a letter dated June 23, 1997 requesting that the Board reconsider its decision of February 3, 1997. In a letter dated June 30, 1997, Castleton responded to the motion stating that 11 DCMR 3332.2 of the Board's Rules requires that a motion for reconsideration be filed within 10 days of the filing and service of the written order of the Board. Castleton stated that the order from which Ms. Kahlow seeks reconsideration was issued almost five months ago. Therefore, the motion is untimely.

Based on the motion for reconsideration, the response and the applicable rules, the Board concludes that the motion was filed in an untimely manner. The Board notes that no waiver of the Board's Rules was requested. Therefore, the merits of the motion for reconsideration will not be considered in this order.

THE MOTION FOR MODIFICATION OF PLANS:

In the request for modification of plans, the movant stated that last October, at Castleton's request, the Board approved a modification of plans to reallocate the residential space into one central location in the building. The approved building plans indicate that no windows are to be located along the exterior western wall. The approved plans also indicate a small ground floor retail space to the west of the building entrance, accessible from the street, with a separate adjacent internal building services space to the rear of that space, accessible from the lobby. Along with the motion, the movant submitted the existing approved plans for each of those features and the proposed modified plans.

Several timely letters were filed in opposition to the motion for modification of plans. They were received from Advisory Neighborhood Commission 2A, ANC SMD Commissioners for 2E-04 and 2A-06, Council Member Jack Evans, Barbara Kahlow, David Bowes and Michael Walden.

The Reduced Residential Component in turn for Quick Development of the Site:

In Ms. Kahlow's letter dated June 23, 1997, she stated that in 1996, the developer made written commitments with the community stating that "The developer commits to apply for and diligently pursue to completion, within a reasonable amount of time, all zoning, preservation, permit, and final building permit approvals....The Developer commits to a timetable to begin construction within 6 months of obtaining the Approvals and to use best efforts...to substantially complete the New Project within 2 years after construction begins." Ms. Kahlow stated that the applicant's 1996 modification called for a smaller residential component as compared to the previous plans. She noted that she supported that modification based on the developer's written

commitments on May 19, 1996. She stated that the neighbors still want a substantial residential component, consistent with how the property is zoned.

Ms. Kahlow noted that in February 1997, the developer cancelled the Mayor's Agent hearing scheduled for March 17, 1997, in violation of his written commitment. Ms. Kahlow is of the view that the developer now is trying to distort the Board's process and the current request for modification is an attempt by Castleton to further delay construction of the project which was promised to begin in a reasonable period of time.

A number of the other opponents to the motion expressed the same view about the movant's failure to keep the promises made. In light of the fact that the lot has not been developed in a timely fashion, these opponents reiterated their desire to have a substantial residential component at the site.

By letter dated July 28, 1997, ANC 2A submitted a resolution in opposition to the modification request. The ANC also made note of the cancelled Mayor's Agent hearing and stated that the movant has not yet rescheduled this hearing in a reasonable period of time. This is in spite of the fact that the applicant was aware that for the community time was of the essence. ANC 2A expressed the view that the current modification request is primarily intended to further extend the six months validity of the Board's order beyond the August 1997 expiration date, for a project which should have had a building permit no later than early 1994.

In a letter dated June 27, 1997, David Bowes requested that the Board not allow the developer to depart from written commitments made to the community about when and how the development would proceed. He reiterated the community's interest in a substantial residential component in the building and he pointed out that allowing modifications would take the process backward, rather than proceeding with what was settled upon and agreed to.

Council Member Jack Evans, by letter dated June 27, 1997 stated that he originally testified in opposition to the application in 1991. However, on May 29, 1996, he submitted a letter of support for a modification to the 1993 plan (which noted that the 1993 plan was based on a settlement agreement between the developer and the community). This 1996 plan called for a smaller residential component than approved by the Board in 1993. His support of this 1996 plan was based on a personal commitment made to him by the developer to develop the property quickly. He stressed the community's desire for a substantial residential component, given that the developer is not proceeding as promised.

By letter dated June 25, 1997, Sara Maddux, the Single Member District Commissioner for ANC 2A-06, opposed the modification request. She stated that the applicant has failed to honor its promise of prompt construction, therefore the community is renewing its original position for a substantial residential component in any development of this site.

Responding to the issue of quick development of the site specifically raised by Ms. Kahlow, Castleton stated that it intends to honor the terms of the written commitment to move forward "within a reasonable amount of time" to completion of the project. However, the movant and Ms. Kahlow disagree on the meaning of the term "reasonable". In the movant's

view, Ms. Kahlow would have Castleton build the project now on a speculative basis, without having first secured a tenant. The movant stated that this is not only unreasonable; it is impossible because in the current real estate market, one cannot secure a construction loan without significant pre-leasing to at least one major tenant.

The movant pointed out that the plan modifications requested by the applicant are intended to respond to issues raised in discussions with prospective tenants about the building. They are intended to reposition the building to appeal to the most active segment of the market. The need to secure a tenant prior to going forward has been the applicant's consistent message in all forums where the project has been discussed. The applicant stated that Ms. Kahlow has been in attendance at all of these forums and is aware of that fact.

The movant stated that it is vigorously marketing the project to a number of potential users. The modification requests are intended to make the building more attractive to those users. If Ms. Kahlow's request to deny the motion is granted, this will ensure that the property will continue to remain vacant and abandoned for the indefinite future. This would not be in the best interest of anyone, including Castleton, Ms. Kahlow or the District of Columbia.

Windows on the Western Wall:

Ms. Kahlow stated that the current modification addresses two issues: (a) the windows on the western wall and (b) the removal on an interior wall. She stated that the windows are in violation of the developer's written commitment and they would intrude upon the privacy of the neighboring residential units. In her view the windows do not make sense, since they would be blocked if the area behind the Mullett townhouses are developed. Such development is seriously being considered by the new owner of the immediately adjacent building to the west.

In a letter dated July 15, 1997, Michael Walden stated that he chaired the Westbridge Condominium Association's Committee on the 2501 Pennsylvania Avenue development proposals. Although that Committee opposed the proposals made around 1991, he and several of his neighbors supported the October 1996 modifications submitted by the new developer. With regard to the most recent modifications, he stated that he is most disturbed by the modification itself and the way in which it has been submitted. Therefore, he fully supports the views expressed by Ms. Kahlow in her letter.

Council Member Evans stated that the windows that were deliberately excluded from the prior plan, would intrude upon the privacy of the neighboring residential units. In his view such an invasion of privacy is problematic and should not be approved by the Board.

In correspondence submitted to the Board, Westy Byrd (ANC 4E-04) and Sara Maddux (ANC 2A-06) both agreed with the view that the windows would be an intrusion upon the privacy of the nearby residents.

Responding to the issue about the windows, Castleton stated that there is no written commitment by the developer regarding the presence or absence of windows on the western wall. These windows would be above the height of the adjacent buildings to the west. They

would face the Westbridge Condominium building, but that building is located more than 110 feet to the west of the subject property. Consequently, they would not "intrude upon the privacy of the neighboring residential units" as alleged by Ms. Kahlow.

Pursuant 11 DCMR 3335.2, "The Board shall consider requests to approve modifications to plans approved by the Board...." The standard for review appears in Subsection 3335.7 which states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application." The movant maintained that the modifications requested are minor and do not change the material facts that the Board relied upon in approving the application. Therefore, Castleton requested that the motion be approved.

Upon consideration of the motion, the responses and the applicable regulations, the Board concludes that the movant has met the burden of proof for the motion filed. The Board concludes that the requested modifications are minor and do not change the material facts relied upon by the Board in deciding to grant the application. The Board is of the opinion that the windows will be an adequate distance away from the nearest residential structure. The Board notes that there was no opposition to the change in the interior wall and agrees with the movant that denying the modifications would further delay construction at the site because of the inability to satisfy potential tenants.

Accordingly, it is hereby **ORDERED** that the **MOTION for RECONSIDERATION** be **DENIED** and that the **MODIFICATION of PLANS** be **APPROVED**.

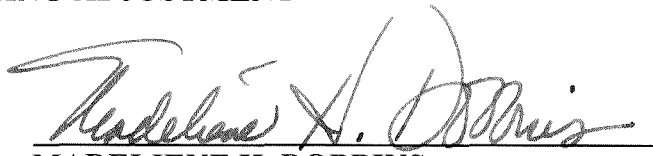
DECISION DATES: September 3 and October 1, 1997

Vote: 3 - 0 (Susan Morgan Hinton, Sheila Cross Reid and Laura M. Richards to deny the motion for reconsideration; Betty King not voting, not having heard the case; Maybelle Taylor Bennett not present, not voting).

Vote: 3 - 1 (Maybelle Taylor Bennett, Susan Morgan Hinton and Sheila Cross Reid to approve the modification of plans; Laura M. Richards opposed to the motion).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

Final Date of Order: MAR 3 1 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord15461/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15461

As Director of the Board of Zoning Adjustment, I certify and attest that on
MAR 31 1998 a copy of the decision entered on that date in this matter was
mailed first class, postage prepaid to each party in this case, and who is listed below:

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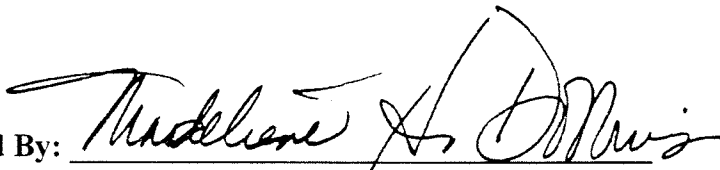
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Director

Date: MAR 3 | 1998

attest/ljp